

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re: TESTOSTERONE)
REPLACEMENT THERAPY) Case No. 1:14-cv-01748
PRODUCTS LIABILITY LITIGATION) MDL No. 2545
)
This Document Relates To:)
Cases Identified on Exhibit A)
)

**DEFENDANTS' THIRD CORRECTED NOTICE OF DEFICIENCY
PURSUANT TO CASE MANAGEMENT ORDER NO. 115**

Pursuant to Case Management Order No. 115 (Cut-off Date for Supplemental Plaintiff Profile Form With Respect to AbbVie Defendants) (“CMO 115”) (ECF No. 2519), Defendants AbbVie Inc.¹ and Abbott Laboratories (“AbbVie”), by their undersigned counsel, hereby notify the Court of the corrected third group of Plaintiffs who have provided deficient Plaintiff Profile Forms (“PPF”), and in support thereof state as follows:

1. On April 27, 2018, this Court entered CMO 115, directing each Plaintiff asserting claims against AbbVie and subject to Case Management Order No. 85’s (Supplemental Plaintiff Profile Form – PPF) (ECF No. 2295) requirement to submit a PPF with supporting evidence “to ensure that they have submitted a PPF and required medical and pharmacy records that are substantially complete in all respects in compliance with CMO 85.” (CMO 115 at 2)
2. CMO 115 further provides that, after May 11, 2018, “AbbVie shall notify the Court on a rolling basis of any Plaintiffs they believe have continuing deficiencies.” (*Id.*)

¹ AbbVie was established in January 2013 as an independent, publicly traded company from the innovative pharmaceutical business of codefendant Abbott Laboratories, which no longer sells AndroGel in the United States.

3. Plaintiffs' counsel are to have 3 business days to meet and confer with AbbVie if they believe they have complied with CMO 115. (*Id.*)

4. AbbVie shall then submit either a "Corrected" or a "Confirmed" Notice of Deficiency, and the Court shall issue an "Order To Show Cause Why the Failure to Comply By May 11, 2018 Should Be Excused." (*Id.*)

5. Plaintiffs' counsel are to have 3 business days to respond to the Order To Show Cause. (*Id.*)

6. On June 11, 2018, AbbVie filed its Third Notice of Deficiency Pursuant to CMO 115 ("Third Notice") (ECF No. 2630), which identified 303 Plaintiffs who had submitted deficient PPFs.

7. After meeting and conferring with counsel in the days that followed, AbbVie has amended its Notice and submits 164 Plaintiffs on the attached Exhibit A who are all subject to CMO 115 and have continuing deficiencies as outlined in the exhibit. Exhibit A also contains a column listing the outcome of the parties' discussions from the meet-and-confer period.

8. Of the 164 Plaintiffs on the attached Exhibit A, 1 Plaintiff is considering dismissal but has not yet entered a stipulation of dismissal; 66 Plaintiffs have not responded; and 97 Plaintiffs have responded but have not cured their deficiencies.

9. Of the 138 Plaintiffs removed from the Third Notice, 9 Plaintiffs have agreed to dismiss their cases, 2 Plaintiffs' counsel have filed motions to withdraw, and 127 Plaintiffs have resolved their deficiencies by either amending their PPFs, providing additional records, or clarifying that they have produced all available records and are relying on the currently produced set of records to substantiate their alleged injuries and AndroGel use. However, while some Plaintiffs may have cured their PPF deficiencies at this stage under CMO 115, AbbVie reserves

the right to challenge lack of product usage in temporal proximity to Plaintiffs' alleged injuries at a later date.

WHEREFORE, AbbVie respectfully requests that the Court enter an Order To Show Cause Why the Failure to Comply by May 11, 2018 Should Be Excused with respect to the cases on Exhibit A.

Dated: June 18, 2018

/s/ Michelle H. Yeary
Michelle Hart Yeary
DECHERT LLP
A Pennsylvania Limited Liability
Partnership
2nd Floor, 100 Overlook Center
Princeton, NJ 08540
Telephone: (609) 955-3200
Fax: (609) 955-3259
 michelle.yearly@dechert.com

*Attorney for Defendants AbbVie Inc., and
Abbott Laboratories, Inc.*

CERTIFICATE OF SERVICE

I, Michelle Yeary, hereby certify that on June 18, 2018, the foregoing was filed via the Court's CM/ECF system, which will automatically serve and send notification of such filing to all registered attorneys of record.

/s/ Michelle Yeary